

मा.उच्च न्यायालय / प्रशासकीय
प्राधिकरणे यांचेसमोर शासनाविरुद्ध
दाखल प्रकरणांत तत्परतेने व विहित
मुदतीत प्रतिज्ञापत्र सादर करण्याबाबत.

महाराष्ट्र शासन
विधि व न्याय विभाग
शासन परिपत्रक क्रमांक : ५५६ / "ई" शाखा
मंत्रालय, मुंबई ४०० ०३२.
दिनांक : १८ मे, २००७.

परिपत्रक

महाराष्ट्र शासन व शासकीय अधिकारी यांच्याविरुद्ध दाखल रिट याचिका/मूळ अर्जांमध्ये याचिका आणि मूळ अर्ज, न्यायालयापुढे/न्यायाधिकरणपुढे दाखल झाल्यावर आणि सदर प्रकरणांत न्यायालयातर्फे/न्यायाधिकरणातर्फे सूचनापत्र संबंधित प्रशासकीय विभागांवर/अधिकार्यांवर बजावण्यात आल्यावर, सदर प्रकरणी बचावासाठी काय कार्यवाही करावी, त्याबाबतच्या स्पष्ट सूचना व मार्गदर्शक तत्वे, शासनाची विधिविषयक कामकाज नियमावली १९८४ च्या नियम ५८ मध्ये सविस्तरपणे दिलेले आहेत. (छायांकित प्रत सोबत जोडली आहे.) सदर नियमानुसार संबंधित सरकारी वकीलास रिट याचिकेत नोटीस किंवा नोटीस ऑफ मोशन त्यांच्यावर तामील झाल्यानंतर काय कार्यवाही करावी याचे पण निदेश दिलेले आहेत. तसेच ह्या विभागाचे परिपत्रक क्र.८८५/ई, दि.१.७.२००३ नुसार संबंधित सरकारी वकीलांनी न्यायालयापुढील प्रकरणांत तत्परतेने हजर राहण्याच्या सूचना दिलेल्या आहेत. मा.उच्च न्यायालय, मुंबई यांनी एका प्रकरणी दिलेले अभिप्राय पाहता असे स्पष्ट होते की, शासनाचे प्रशासकीय विभाग आणि त्यांच्या नियंत्रणाखालील विभाग/कार्यालये तसेच संबंधित सरकारी वकील सदर नियमांचे व परिपत्रकाचे पालन तंतोतंतपणे करत नाहीत व त्यामुळे मा.न्यायालयापुढे व प्रशासकीय न्यायाधिकरणपुढे विहित कालमर्यादेत किंवा वेळोवेळी दिलेल्या कालमर्यादेत शासनातर्फे/शासन अधिकार्यांतर्फे आवश्यक ते उत्तराचे शपथपत्र

दाखल केले जात नाही व त्यामुळे बऱ्याचवेळा प्रकरणे एकतर्फी निकाली काढली जातात किंवा न्यायालयातर्फे प्रतिकूल अभिप्राय दिले जातात किंवा, शासनास खर्च भरावयास भाग पाडून अशी शपथपत्रे दाखल करण्यास मान्यता दिली जाते व शासन तिजोरीवर खर्चाचा बोजा पडतो. बऱ्याचवेळा विलंबास कारणीभूत अधिकार्यांच्या विवशतातून असा खर्च वसूल करण्याचे निदेश दिले जातात. अशाच प्रकारच्या प्रकरणांत, मा.मुख्य न्यायमूर्तींच्या मुंबई येथील पीठाने अलोचना करताना झटले की, बऱ्याचवेळा शपथपत्र दाखल करण्यास, शासनातर्फे वेळेसाठी अर्ज केला जातो. तथापि, पुरेसा वेळ देऊन देखील प्रशासकीय विभागामार्फत सरकारी वकीलांच्या सूचनांअभावी शासनातर्फे शपथपत्र न्यायालयापुढे वेळेत दाखल होत नाहीत. ही बाब गंभीरतेने घेऊन, मा.न्यायालयाने निदेश दिले की, जर शासनातर्फे पुरेसा भरणाशिवाय शपथपत्र न्यायालयापुढे वेळेत दाखल झाले नाहीत तर, शासनाकडून खर्च वसूल केला जाईल, (Heavy cost will be imposed on state) आणि सदर खर्च संबंधित अधिकार्यांच्या वेतनातून वसूल केला जाईल. त्याचप्रमाणे न्यायालयाच्या आदेशाचे पालन न झाल्यास, न्यायालयाचा अवमान नोटीस देखील दिल्या जाऊ शकेल.

जेव्हा त्या सर्व गोष्टी टाळण्यासाठी सर्व प्रशासकीय विभागांचे व सरकारी वकीलांचे लक्ष, शासनाची विधि विषयक कामकाज नियमावली, १९८४ च्या नियम ५८ कडे वेधण्यात येत आहे, सर्व प्रशासकीय विभागांनी व सरकारी वकीलांनी सदर नियमांत नमूद केल्याप्रमाणे, न्यायालयापुढे प्रलंबित रिट याचिका आणि प्रशासकीय न्यायाधिकरणापुढे प्रलंबित मूळ अर्जांमध्ये संबंधित सरकारी वकीलांनी/सादरकर्ता अधिकार्यांनी तत्परतेने हजर होऊन सदर नियमांत नमूद केल्याप्रमाणे, प्रकरणे संबंधित अधिकार्यांच्या व तातडीच्या प्रसंगी संबंधित विभागाचे प्रधान सचिवांशी प्रत्यक्ष संपर्क साधून निदर्शनास आणावी आणि प्रशासकीय विभाग/अधिकार्यांनी सदर प्रकरणी, सूचना/अभिलेख/कागदपत्रे/परिच्छेदनिहाय उत्तर उपलब्ध करून प्रकरणाशी संबंधित माहितगार अधिकार्याने संबंधित सरकारी वकील/

सर्वकारी अधिकारी यांच्या स्वकीय राहून, शासनातर्फे, वेळीच बदलून, पदभर्यादेत, संबंधित सक्षम अधिकार्याचे मान्यतेने शपथपत्र मा. न्यायालयापुढे/ न्यायाधिकरणापुढे दाखल नोंदून याची खबरदारी घ्यावी.

सदर परिपत्रक प्रशासकीय विभागांनी त्यांच्या नियंत्रणखालील कार्यालयाच्या व अधिकार्याच्या निदर्शनास आणावे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नांवाने,

M. N. Jilani
(एम. एन. जिलानी)

प्रधान सचिव व विधि परामर्शी

प्रत.

सर्व मंत्रालयीन विभाग, 'अ' शाखा विधी व श्राव्य विभाग

महाविदक्ता, महाराष्ट्र राज्य, मुंबई.

सह सचिव, विधि व श्राव्य विभाग, नागपूर/औरंगाबाद.

अतिरिक्त सरकारी वकील, उच्च न्यायालय (अपील शाखा), मुंबई.

सरकारी वकील, उच्च न्यायालय (मूक्त शाखा), मुंबई.

सरकारी वकील, उच्च न्यायालय, मुंबई.

सरकारी वकील, उच्च न्यायालय अतिरिक्त नागपूर/औरंगाबाद.

मुख्य सहायक अतिरिक्त, महाराष्ट्र प्रशासकीय न्यायाधिकरण मुंबई

नागपूर/औरंगाबाद.

सरकारी वकील, सर्वोच्च न्यायालय, महाराष्ट्र सदर, कोपर्निकस रोड, नवी दिल्ली.

*Attending the matters in the High Court
of Judicature at Bombay, Appellate Side*

By

*the Additional Government Pleader and
Assistant Government Pleaders.*

GOVERNMENT OF MAHARASHTRA

Law and Judiciary Department

Circular No. 885/E

Mantralaya, Mumbai-400 032

Dated the 1-7-2003

CIRCULAR

Attention of all the Law Officers in the State of Maharashtra is invited to the Government Circular bearing No. Sankirna/ 2002/ (120)/ Desk-14 Dated, 9th January, 2003 issued by this department instructing to attend the Court, promptly on behalf of the State of Maharashtra in the matters allotted to them. However, it is noticed that some of the Law Officers have not taken the note of the said Government Circular seriously, and still remains absent in the Court/ Tribunal without permission in the matters allotted to them. In this connection attention of Additional Government Pleader and Assistant Government Pleaders, High Court (A.S.), Mumbai is invited to the observations made by the Hon'ble High Court, Judicature at Bombay, Appellate Side (CORAM: SHRI. R.M.LODHA and SHRI. A.S.AGUIAR, JJ) in the recent Judgment/ order dated : 3rd April, 2003 passed in Writ Petition No. 1112 of 1992 (Smt. Archana Abhay Wani and Ors. V/s. The Deputy Collector and Competent Authority (ULC), Nasik and Ors.). The said observations of their Lordships are reproduced as under:-

We heard Mr. V.A.Thorat, learned senior counsel for some time. When we

wanted to know who was appearing for the State Government and its functionaries Mr. N.P.Deshpande, learned Assistant Government Pleader submitted that on behalf of State Government and its functionaries Mr. S.R.Nargolkar, Assistant Government Pleader, has been assigned the matter. Mr. S.R.Nargolkar is not available in the court nor affidavit in reply has been filed by the State. We are daily facing lack of assistance by the Assistant Government Pleaders for the reasons best known to them. However, for want of assistance by Assistant Government Pleaders the old matters can not be left in lurch and allowed to remain pending.

The Government Pleader/ Additional Government Pleader, High Court (Original Side and Appellate Side), Bombay and its benches at Nagpur and Aurangabad are hereby instructed to bring this circular to the notice of all the law officers working under them and to make necessary arrangements so that the law officers shall attend the Court promptly on behalf of the State of Maharashtra in the matters allotted to them, and strict action shall be taken against the concerned Law officer who remains absent in the Court without permission.

By order and in the name of the
Governor of Maharashtra

(M.G.Gaikwad)

Principal Secretary & Remembrancer of Legal Affairs

Copy for information and necessary action to: -

- 1) The Government Pleader/ Additional Government Pleader, High Court (Original Side)/(Appellate Side), (Writ Cell) Bombay, Nagpur, Aurangabad.
- 2) The Joint Secretary, Law and Judiciary Department, Nagpur, Aurangabad.
- 3) The Deputy Secretary, Law and Judiciary Department/ Desk-14, 'A' Branch, 'M' Branch, Mantralaya, Mumbai.

CHAPTER VIII

WRIT PETITIONS AND APPEALS ARISING THEREFROM IN THE HIGH COURT
(ORIGINAL SIDE) AT BOMBAY AND WRIT PETITIONS IN THE HIGH COURT
(APPELLATE SIDE) AT BOMBAY, NAGPUR AND AURANGABAD.

Part A. Writ Petitions.

57. Procedure for filing of Writ Petitions on behalf of State and its officers.—

(1) When a Collector or a Government officer concerned is not satisfied with the orders of any court, tribunal, Board, Commission or other body against which no other remedy is open to get redress, he shall send a proposal to file a Writ Petition under Article 226 and/or 227 of the Constitution against such an order to the administrative department concerned within the shortest possible time. His proposal shall contain the following papers:—

- (a) the grounds for filing Writ Petition giving reasons thereof;
- (b) Rules, Orders, precedents and notifications relied upon;
- (c) one certified and three uncertified copies of judgment, decree or order against which the Writ Petition is to be filed.

(2) The administrative department concerned on receipt of such papers shall send all the case papers alongwith its opinion to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

(3) The Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, if satisfied that a Writ Petition has been filed, shall issue instructions to the Government Pleader concerned in the High Court for filing a Writ Petition and also send all the case papers to him.

(4) On receipt of the case papers, the Government Pleader concerned in the High Court shall draft a petition on the basis of the material supplied to him and send it to the administrative department concerned for scrutiny. The administrative department concerned shall then send the draft Writ Petition to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, for approval.

(5) After obtaining approval thereon, the Government Pleader concerned in the High Court shall take necessary steps in getting the Writ Petition filed in the High Court.

58. Procedure for the defence of Writ Petitions on behalf of State and its officers.—(1) (a) Whenever a notice or notice of motion in a Writ Petition is served on the Government Pleader concerned in the High Court on behalf of

the State, he shall on the same day, as far as possible, and latest by next day forward copies of the notice accompanied by the copy of Rule i.e. order of the court and connected Writ Petition, affidavit and other annexures to the administrative department concerned and to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

(b) He shall also apprise the administrative department concerned on any of the following points:—

- (i) *vires* or legality of any legislative enactment or statutory rule has been challenged;
- (ii) executive orders or executive actions of Government and/or its officers have been challenged and the matter is such which not only affects the rights of the rival parties, but also the interest of Government;
- (iii) any taxation matter has been challenged;
- (iv) any application for stay or any interim order has been made.

(c) He shall, on finding that the Writ Petition falls under any one or more of the above points, put in appearance in the High Court on behalf of the State, at the admission stage without waiting for instructions from the administrative department or the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be. Where he finds that the question is between two private parties and Government's interest is not involved, he shall in the first instance obtain instructions from the administrative department concerned and then file appearance before the High Court for bringing the facts about Government's non-involvement in the case to the notice of the High Court.

(d) In other Writ Petitions he shall file appearance in which the State is impleaded as a party, and obtain adjournment, if no instructions from the administrative department concerned are received by him in time.

(2) Whenever a notice or notice of motion is served on the Government officer concerned, who is impleaded as a party in his official capacity, he shall without the least delay, forward to the administrative department concerned, all the relevant case papers, including a copy of petition, a statement of facts, which are necessary for meeting the allegations in the Writ Petition and his recommendations as to whether the Writ Petition should be opposed or not. He shall also forward the copies of the above case papers to the Government leader concerned in the High Court.

(3) The administrative department concerned shall, on receipt of notice or notice of motion and its enclosures under sub-rules (1) and (2), make such inquiry into the facts of the case, as may be necessary and if the Rule is intended to be opposed, shall prepare or obtain parawise report on all the points raised in the Writ Petition and affidavit.

(4) On receipt of or after preparing parawise replies under sub-rule (3), the administrative department concerned shall forward the complete case papers,

as far as possible, within two weeks from the date of receipt by it or in any case before the expiry of the date mentioned in the notice or notice of motion to the Government Pleader concerned in the High Court and also forward the copies of the same to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, alongwith the following papers:—

(a) Recommendations whether the Writ Petition should or should not be opposed;

(b) self-contained note making references to rules, orders and precedents;

(c) such additional information as is likely to help the Government Pleader concerned in the High Court in the conduct of the case.

Note.—(i) Generally the Rule is returnable except as otherwise ordered by the High Court, within a period which is not less than 14 days after the service of notice on the opponent;

(ii) the parawise report should not contain cryptic answers such as "not admitted" or "denied" but should contain elaborate factual position and should be invariably accompanied by copies of relevant notifications, rules and orders.

(5) In case where any information or material is to be collected from the subordinate officer/s or the concerned Government officer for the purpose of preparation of parawise report, the administrative department or the Government officer concerned shall, at the earliest opportunity, bring it to the notice of the Government Pleader concerned in the High Court requesting him to take such adjournment as may be necessary for the purpose.

(6) *Drafting and swearing of counter affidavit.*—(a) The Government Pleader concerned in the High Court shall then draft a counter affidavit on the basis of case papers received under sub-rule (4).

(b) The administrative department concerned shall depute a competent officer, conversant with the subject matter of the petition, to assist the Government Pleader concerned in the High Court in drafting of the affidavit. Any information required by the Government Pleader concerned in the High Court in connection with the preparation of the counter affidavit shall be furnished by the administrative department concerned as early as possible.

(c) The Government Pleader concerned in the High Court shall send the draft counter affidavit to the administrative department concerned for verifying the correctness of the facts stated therein.

(d) The administrative department concerned shall then send the draft counter affidavit to the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, who in turn shall send it duly approved, to the administrative department concerned for onward transmission by that department to the Government Pleader concerned in the High Court.

(e) The draft counter affidavit shall then be sworn in by the competent officer authorised to do so by the administrative department concerned for

which the date by which the counter affidavit has to be filed in the High Court shall be intimated by the Government Pleader concerned in the High Court to the administrative department and the Government officer concerned, if such date has been fixed by the High Court in any case.

(f) On swearing the counter affidavit by the competent officer, the Government Pleader concerned in the High Court shall file it in the High Court:—

Provided that—

(i) except in urgent cases, when no time is available, the draft affidavit shall be sent by the Government Pleader concerned in the High Court to the administrative department concerned for approval; or

(ii) in cases involving the validity of any statute or statutory rule or any complicated issues of general public importance, the Government Pleader concerned in the High Court shall obtain suitable adjournment, if no time is available, and forward the draft counter affidavit with other connected papers to the Remembrancer of Legal Affairs for approval. The Government Pleaders in the High Court at Nagpur and Aurangabad should forward such counter affidavits to the Remembrancer of Legal Affairs through the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be.

59. *Conduct of Writ Petitions.*—(1) *Important points respecting the conduct of Writ Petitions.*—(a) In view of the expeditious and summary nature of the proceeding, prompt action is necessary at every stage of the Writ Petition on the part of the Government Pleader concerned in the High Court as well as the administrative department and the Government officer concerned.

(b) The administrative department concerned shall depute the competent officer with all instructions and records or such other material as may be required by the Government Pleader concerned in the High Court. The Government Pleader concerned should intimate well in advance, as far as possible in writing and where there is no sufficient time then on phone, to the competent officer concerned about the date on which the part heard case is subsequently brought on the warned list so as to enable the competent officer concerned to be prepared to instruct the Government Pleader concerned on the date fixed for hearing. The competent officer shall not be detained unnecessarily by the Government Pleader concerned unless his presence is essential.

(c) Whenever the question of making a concession or giving an undertaking before the High Court on behalf of the State or a Government officer arises, the Government Pleader concerned in the High Court shall obtain a suitable adjournment and refer the matter to the administrative department concerned for expeditious scrutiny and examination of the pros and cons in consultation with the Remembrancer of Legal Affairs or the Joint Secretary or the Deputy Secretary to Government, Law and Judiciary Department at Nagpur or Aurangabad, as the case may be, if necessary. This does not, however, preclude the Government Pleader concerned in the High Court from conceding obvious points of law during the course of arguments. However, the invalidity or